

Application Number 10/687,298  
Responsive to Final Office Action mailed July 24, 2007

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**REMARKS**

This submission is responsive to the Final Office Action dated July 24, 2007. Applicant does not amend the claims by way of this submission. Claims 33-38, 40-49, 55 and 56 remain pending.

In view of the following remarks Applicant requests reconsideration and withdrawal of the rejections set forth in the Final Office Action.

**Claim Rejection Under 35 U.S.C. § 103**

The Final Office Action rejected, under 35 U.S.C. § 103(a)

(a) claims 33-34, 37-40 and 55 as being unpatentable over Lebel et al. (US 6,585,644, hereinafter Lebel) in view of Smith (US 5,108,889);

(b) claim 35 as being unpatentable over Lebel in view of Smith as applied to claims 33, 34, 37-40 and 55 above, and further in view of Cozette (US 5,063,081);

(c) claim 36 as being unpatentable over Lebel in view of Smith as applied to claims 33, 34, 37-40 and 55 above, and further in view of Miller (US 4,748,562);

(d) claims 41 and 42 as being unpatentable over Lebel in view of Smith as applied to claims 33, 34, 37-40 and 55 above, and further in view of Schulman et al. (US 6,068,088, hereinafter Schulman);

(e) claims 43, 45-49 as being unpatentable over Petty (US 4,503,859) in view of Lebel and Smith;

(f) claim 44 as being unpatentable over Petty in view of Lebel and Smith as applied to claims 43 and 45-49 above, and further in view of Cozette;

(g) claim 56 as being unpatentable over Petty in view of Lebel and Smith as applied to claims 43 and 45-49 above, and further in view of Miller.

Applicant respectfully traverses these rejections. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

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***Claims 33-38, 40-42 and 55***

For example, with reference to independent claim 33, the applied references lack any teaching that would have suggested an implantable device wherein the processor enables delivery of power from the power source to the sensor only during a first time interval during each measurement cycle when the sensor is sensing the at least one physiological parameter and wherein the processor enables delivery of power from the power source to the transmitter only during a second time interval during each measurement cycle.

Applicant submits that claims 33-38, 40-42 and 55 are patentable over the applied references for at least the reasons stated in Applicant's Amendment dated April 30, 2007. In responding to Applicant's arguments presented in the previous submission, the Final Office Action stated, "The examiner notes that it is clear that the sensor must sense the data prior to the transmitter being able to send it. As such, it is clear that power is provided to the sensor in a first interval and to the transmitter at a second, later interval."<sup>1</sup> In other words, the Final Office Action argued that, even though neither Lebel nor Smith suggests providing power to a sensor only during a first interval and a transmitter only during a second interval, it would have been obvious to do so because providing power to a sensor only during a first interval and a transmitter only during a second interval is the necessary result of combining the Lebel and Smith disclosures.

Applicant respectfully suggests that this argument is incorrect. Providing power to a sensor only during a first interval and a transmitter only during a second interval is not the only possible result of combining the Lebel and Smith disclosures. In fact, when combining the teachings of Lebel and Smith, a person of ordinary skill in the art would have most likely adopted a sensor and transmitter powering scheme that is directly contrary to this requirement of claim 33.

In particular, one combination of the teachings of Lebel and Smith is to provide power to the sensor and transmitter during the same time period. Other prior art of record, which would have been considered by a person of ordinary skill when combining Lebel and Smith, teaches providing power periodically to both a sensor and a transmitter simultaneously. For example, U.S. Patent No. 5,984,857 (submitted by Applicant in an Information Disclosure Statement dated

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<sup>1</sup> Final Office Action dated July 24, 2007, page 5, paragraph 4.

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March 8, 2004) discloses an ingestible bolus that stays in a "'sleeping' mode" until a "data burst cycle" is triggered. The "data burst cycle" includes sensing a temperature and transmitting the data to a receiver.<sup>2</sup> As this indicates, the solution known to those of ordinary skill in the art at the time of the invention was, at best, to deliver power to the sensor and transmitter at the same time, and to discontinue providing power to sensor and transmitter at the same time. The Final Office Action has cited no teaching or rationale that would have caused a person of ordinary skill in the art to ignore the teachings of U.S. Patent No. 5,984,857 when combining Lebel and Smith, and instead provide power to a sensor only during a first interval and a transmitter only during a second interval, as required by claim 33

Claims 34-38, 40-42 and 55 are dependent on claim 33 and are in condition for allowance for at least the reasons presented above.

*Claims 43-49 and 56*

Claim 43 requires providing power to a sensor circuit for a first time interval so as to obtain a parameter measurement indicative of gastroesophageal reflux and ceasing providing power to the sensor circuit following the first time interval. Claim 43 also requires providing power to a transmitter circuit during a second time interval, following the first time interval, so that a parameter signal indicative of the parameter obtained by the sensor circuit can be transmitted to a receiver located outside of the body of the patient, and ceasing providing power to the transmitter circuit following the second time interval. Petty in view of Lebel and Smith fails to teach or suggest the elements of claim 43.

As discussed above, Lebel and Smith fail to disclose or suggest any relationship between delivery of power to a sensor and delivery of power to a transmitter. Petty provides no teaching that overcomes the requirements of independent claim 43.

Claims 44-49 and 56 are dependent on claim 43 and are in condition for allowance for at least the reasons presented above.

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<sup>2</sup> U.S. Patent No. 5,984,875, Col. 6, ll. 31-41.

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For at least these reasons, the Final Office Action has failed to establish a prima facie case for non-patentability of Applicant's claims 33-38, 40-49, 55 and 56 under 35 U.S.C. 103(a). Withdrawal of this rejection is respectfully requested.

**CONCLUSION**

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Applicant has focused on the requirements of the independent claims for purposes of clarity, and does not acquiesce in any rejection, argument, or characterization in the Final Office Action. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

9-19-07

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